

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TAMARACK RESORT LLC

Defendant

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CONSENT DECREE

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INTRODUCTION

A. Whereas, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed the Complaint in this matter alleging that Tamarack Resort LLC (“Tamarack”) has violated Section 301(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1311(a), relating to the Act’s requirements governing the discharge of storm water. The alleged violations include claims Tamarack violated the Federal Storm Water Construction General Permit (“CGP”) which was applicable during the pendency of the construction identified in the Complaint.

B. Whereas Tamarack neither admits nor denies the allegations in the Complaint and nothing in this Decree shall constitute or be construed as an admission of liability, fact or law, or of any wrongdoing on the part of Tamarack.

C. Whereas, the United States and Tamarack have consented to the entry of this Decree without trial of any issues.

D. Whereas, these parties recognize, and this Court finds by entering this Consent Decree, that the United States and Tamarack have negotiated this Consent Decree in good faith, that implementation of the Consent Decree will avoid prolonged and complicated litigation between these parties, and that it is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law and upon consent and agreement of the parties, it is hereby ORDERED, DECREED, and ADJUDGED as follows:

I. DEFINITIONS

1. Except as specifically provided in this Decree, definitions for the terms used in this Decree shall be incorporated from the Clean Water Act and the regulations promulgated pursuant to that Act. Whenever terms listed below are used in this Decree the following definitions apply:

a. Best Management Practices (“BMPs”) shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practice to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

b. Clean Water Act shall mean 33 U.S.C. §§ 1251-1387 (2005).

c. Construction Activities shall mean the disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities.

d. Permit shall mean the Construction General Permits issued by EPA and published on July 1, 2003 (68 Fed. Reg. 39087 - 39091) and any amendments thereto, or, any permit governing storm water discharges from construction activities issued by EPA in the State of Idaho.

e. Site shall mean any part of the Tamarack Resort located near Donnelly, Idaho that is subject to construction activities and which is subject to the NPDES storm water construction regulations set forth at 40 C.F.R. 122.26(b)(14)(x) or 40 C.F.R. 122.26(b)(15).

f. SWPPP shall mean a Storm Water Pollution Prevention Plan as described in the CGP or other plan for controlling pollutants in storm water discharges from Sites.

II. COMPLIANCE PROGRAM

A. Winter Construction Restriction

2. Except as set forth in paragraphs 3 and 4 below, Tamarack shall not allow any earth work or exposed unstabilized soils at the Site during the winter period. The winter period shall be November 15 through March 15 of each year. If measurable snow exists in the immediate area of a construction site below the 5,100 foot elevation contour on March 15, Tamarack will allow no earth work at the construction site until at least ten (10) days after the snow has melted or until April 15, whichever date is later.

3. During the winter period, Tamarack is allowed up to three (3) total acres of earth work at the Site below the 5,100 foot elevation contour, exclusive of the Fairmont Bayview Hotel construction site described below. Of the three total acres of unstabilized soil allowed, no individual piece may exceed one acre in size. No earth work will be allowed above 5,100 feet during the winter period. In addition to the three acre total of allowed unstabilized soils, Tamarack may also allow up to one total linear mile of road way construction on private lot drive ways within the Site during the winter period. For all earth work conducted during the winter period, Tamarack must install erosion and sediment controls within five (5) days of soil disturbance.

In addition to the three acres and one linear mile of road way described above, during the 2008-2009 winter period, Tamarack may allow up to six additional acres of earth work at the construction site of the Fairmont Bayview Hotel, contained in lots B21, B22, B24, B26 and B27 of the greater Tamarack Resort property ("Bayview Site"). The following conditions will apply to the construction of the Bayview Site during the 2008-2009 winter construction period:

(1) Tamarack shall monitor all BMPs in areas of active construction at the Bayview Site daily in accordance with the CGP self inspection procedures.

(2) Tamarack shall sample for settleable solids and turbidity from each area under active construction, each time there is a discharge of surface water from the site to any water body. Tamarack shall sample the discharge itself, the water body just downstream of the discharge, and the background turbidity of the water body - outside of the influence of the construction site's runoff.

(3) If sampling reveals Idaho State Water Quality Standards exceedances, construction at the area in question must immediately cease until EPA approves improved BMPs to protect disturbed areas.

(4) Tamarack shall install sediment controls between all areas undergoing active construction and their discharge points. These sediment controls shall be designed according to good engineering practices, and installed according to the manufacturers' recommendations.

(5) Tamarack shall apply effective, temporary erosion controls to all areas under active construction before all precipitation events. During extended rainfall events, or when snowmelt could reasonably be foreseen, Tamarack must stabilize all active construction areas at end of each work day.

4. Except as provided in paragraph 3 above, during the winter period Tamarack will permit no earth work at the Site except that required as part of routine BMP maintenance or installation, or any work required to be done during this period because of regulatory agency requirements, or as needed to remedy unforeseen situations that could otherwise lead to exceedances of applicable water quality standards. All exposed soils shall have final erosion and

sediment control measures installed no later than November 15, and Tamarack will maintain those control measures for effective stabilization. All earth work performed must at a minimum meet the requirements of the Construction General Permit.

5. For the purpose of this Section, "earth work" means any construction activity that results in the disturbance of the natural ground cover such as, but limited to, bulldozing, foundation excavation, grading, grubbing and clearing. "Exposed unstabilized soils" are soils that are disturbed by construction activity and that are not effectively stabilized through applications and maintenance of erosion controls.

6. Tamarack may request, in writing, a waiver of these winter period requirements where Tamarack deems it necessary, explaining to EPA the reasons why such a waiver is necessary, the requested extent of the waiver, and what BMPs and other erosion and sediment control measures will be used during any earthwork conducted during the winter period to minimize any storm water pollutant discharges. Tamarack shall submit all waiver requests at least 20 days prior to the relevant deadline. EPA will timely review the request and approve or deny the request in EPA's sole discretion. EPA's review or approval of an appropriate request will not be unreasonably withheld.

7. Tamarack and its contractors shall maintain all BMPs throughout the winter period. Where feasible, and where inspections will not cause significant damage to the site, Tamarack shall inspect the BMPs at least once per week during the winter period. Tamarack shall correct all deficiencies identified during the inspection as soon as possible and no later than five days after the inspection or prior to the next storm event, whichever is sooner. The inspection findings, the remedy, and the existence of any conditions that Tamarack believes

precluded timely access or correction of noted deficiencies shall be documented and kept in Tamarack's records for that Site's storm water discharge authorization.

B. Active Construction Period

8. During periods of active construction, from at least March 15 to November 15 of each year, Tamarack shall ensure that it complies with all requirements of the CGP, including, but not limited to: (1) updating of the SWPPP, (2) installation and maintenance of adequate BMPs, (3) good housekeeping at the site, including proper maintenance of the wash out and track out areas, and proper storage, containment and disposal of all materials used on the site.

9. During periods of active construction, Tamarack shall inspect all BMPs at least once per week. Tamarack shall record any deficiencies found during inspections, and shall have all such deficiencies corrected before the next weekly inspection or the next rainfall event, whichever is sooner. All corrections shall be noted on the inspection report. Tamarack shall retain copies of all inspection reports on site with the SWPPP.

10. During periods of active construction, Tamarack shall temporarily stabilize all portions of the site where construction activity has temporarily halted longer than five (5) days, and maintain such stabilization until active construction resumes.

C. Reporting Requirements

11. Tamarack shall provide a written report of each known violation of the CGP and each known violation any of the terms of this Consent Decree by Tamarack or its contractor(s) to EPA within five days of the discovery of the violation.

12. Tamarack shall submit to EPA an annual report, to be submitted by January 30th, summarizing all actions taken to comply with the terms of this Consent Decree and certifying

Tamarack's compliance with all requirements of this Consent Decree in the previous year. This summary certification shall address compliance with Paragraphs 2 through 10. As part of the report, Tamarack shall submit a statement identifying occurrences of non-compliance with the Consent Decree. This report shall be submitted either in hard copy or electronically on a compact disc.

III. CIVIL PENALTY

13. Civil Penalty. Within 30 days after entry of this Decree, Tamarack shall pay a civil penalty of One Hundred Eighty Five Thousand Dollars (\$185,000.00).

14. United States' Costs of Suit. The United States agrees that it shall not seek to recover from Tamarack its costs and attorneys' fees incurred prior to entry of the Decree in this action or in anticipation of this action.

15. Method of Payment. The \$185,000 penalty shall be made payable to the "Treasurer of the United States" by Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice lock box bank, referencing DOJ # 90-5-1-1-08976. The payment shall be made according to written instructions to be provided by Dani Renk, Financial Litigation Agent, who can be reached at (208) 334-1211 or Dani.Renk@usdoj.gov. A confirmation of such transfer shall be forwarded to the United States at the addresses specified in Paragraph 27 (Notification).

IV. GENERAL PROVISIONS

16. Jurisdiction and Venue. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 33 U.S.C. § 1319 and 28 U.S.C. §§ 1331, 1345 and 1355. The complaint states a claim upon which relief may be granted under 33 U.S.C. § 1319. Venue is

proper under 28 U.S.C. § 1391(b) and (c). For purposes of the Decree, Tamarack consents to and will not contest the jurisdiction of this Court over this matter. The Court shall retain jurisdiction to enforce the terms and conditions of this Decree, to resolve disputes arising hereunder and for such other action as may be necessary or appropriate for construction or execution of the Decree.

17. Parties Bound. In accordance with the provisions of Federal Rule of Civil Procedure 65, the provisions of this Decree shall apply to and be binding upon the United States and Tamarack.

18. Tamarack Responsibility. In any action to enforce this Decree, Tamarack shall not assert as a defense the failure of its officers, directors, agents, trustees, servants, employees, successors, assigns, and contractors to take actions necessary to comply with this Decree unless Tamarack establishes that the failure resulted from a Force Majeure event as defined in Section VIII (Force Majeure).

19. No Warranty by the United States. The United States does not, by its consent to entry of this Decree, warrant or aver in any manner that Tamarack's compliance with this Decree will result in compliance with the provisions of applicable federal or state laws, regulations, or permit conditions. Notwithstanding the Plaintiff's review and approval of any data, reports or plans formulated pursuant to this Decree, Tamarack shall remain solely responsible for compliance with this Decree, the Clean Water Act, any Permit, and any other applicable state, federal, or local law or regulation.

20. Final Judgment. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the United States and Tamarack.

21. Purpose of Decree. It is the express purpose of the parties in entering into this

Consent Decree to further the storm water pollution prevention goals of the Clean Water Act. All obligations under this Decree shall be interpreted in a manner consistent with causing Tamarack to maintain compliance with the Act, its Construction General Permits and all applicable regulations at all times.

22. Right of Entry. Until termination of this Decree, the United States and its representatives, contractors, consultants and attorneys shall each have the authority to enter, at reasonable times and upon presentation of credentials, any Site or any location at which records relating to this Decree are kept for the purposes of:

- i. monitoring Tamarack's compliance with this Decree;
- ii. verifying any data or information submitted by Tamarack pursuant to this Decree;
- iii. obtaining samples from any Site and, upon request, splits or duplicates of any samples taken by Tamarack its contractors or consultants; and
- iv. reviewing and copying any records required to be kept by Tamarack pursuant to this Decree.

23. No Limitation on Other Rights of Entry. Nothing in Paragraph 22 (Right of Entry) or any other provision of this Decree shall be construed to limit any statutory right of entry or access or other information gathering authority pursuant to any federal, state, or local law.

24. Preservation of Records. In addition to complying with any other applicable local, state, or federal records preservation requirements, until one calendar year after termination of this Decree, Tamarack shall preserve at least one legible copy of all documents in its possession, custody, or control that relate to the performance of Tamarack's obligations under this Decree.

Within 30 days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Decree, Tamarack shall enter into an agreement with any such agent, consultant, or contractor requiring such person to provide Tamarack a copy of all documents relating to the performance of Tamarack obligations under this Decree.

25. Authority to Sign Decree. The undersigned representative of Tamarack certifies that he or she is authorized to enter into this Decree and to execute and legally bind Tamarack to the terms and conditions of this Decree and meets the requirements for authorized signatory found in 40 C.F.R. § 122.22.

26. Designation of Agent for Service. Tamarack shall identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on Tamarack behalf with respect to all matters arising under or relating to this Decree.

27. Notification.

a. When written notification or communication is required by the terms of this Decree, such notification or communication shall be addressed to the following individuals at the addresses specified below (or to such other addresses as may be designated by written notice to the parties):

As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Reference Case No. 90-5-1-1-08976

United States Attorney
District of Idaho
P.O. Box 32
Boise, Idaho 83707
(208) 334-1211

Mark Ryan
U.S. EPA, Region 10
1435 N. Orchard St.

Robert Grandinetti
Attorney-Advisor
U.S. EPA, OECA

Boise, Idaho 83706
ryan.mark@epa.gov
(208) 378-5768

309 Bradley Blvd., Suite 115
Richland, Washington 99352
(509) 376-3748
grandinetti.robert@epa.gov

As to Tamarack:

Scott Turlington
Director of External Affairs
Suite 100
960 Broadway Avenue
Boise, ID 83706
(208) 472-1750
sturlington@tamarackidaho.com.

b. Notifications to or communications with Tamarack or the United States shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested.

28. Certification of Reports and Submissions. Except as otherwise expressly provided in this Decree, any report or other document submitted by Tamarack pursuant to this Decree which makes any representation concerning compliance or noncompliance with any requirement of this Decree shall be certified by a Responsible Officer of Tamarack. The certification shall be in the following form:

I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____

Name: _____
Title: _____
Date: _____

29. Entire Agreement. This Decree is the final, complete, and exclusive agreement between the Parties. The Parties acknowledge that there are no inducements, promises, representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree.

30. Modification. Except as expressly provided in Section VII (Dispute Resolution), there shall be no modification of this Decree without written agreement of all the parties to this Decree and approval by the Court. Modifications by agreement of the parties shall be effective 10 days after the date the notice is filed with the Court unless otherwise ordered by the Court. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Decree and economic hardship or changed financial circumstances shall not serve as a basis for modifications of this Decree.

31. Public Notice. The parties acknowledge and agree that the final approval and entry of this Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides that notice of proposed consent decrees be given to the public and that the public shall have at least 30 days in which to make any comments. The United States may withhold or withdraw its consent to this Decree based on such comments.

32. Agreement to Entry of Decree. Tamarack hereby agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree.

33. Termination of Decree.

a. No sooner than four (4) years after entry of this Decree, Tamarack may request the

United States' consent to termination of this Decree. In seeking such consent, Tamarack shall demonstrate that:

- i. Tamarack has paid all monies, civil penalties, interest, and stipulated penalties due under this Decree;
 - ii. As of the date Tamarack provides any notice or request to terminate this Decree, EPA has not provided Tamarack with any Notice of Dispute invoking the Dispute Resolution provisions of this Decree, and there are no unresolved matters subject to dispute resolution pursuant to Section VII (Dispute Resolution); and
 - iii. No enforcement action under this Decree is pending.
- b. The United States shall notify Tamarack in writing within 30 days of receiving any request to terminate by Tamarack whether the United States does or does not object to the request. If the United States does not object, then the parties shall jointly file a motion to terminate with the Court. If the United States objects to such request, the parties will work together for a period of at least 30 days in an effort to informally resolve any disputes. The Decree shall remain in effect pending resolution of the dispute by the parties, or, ultimately, the Court.
- c. The Court may terminate this Decree 60 days after Tamarack has filed with the Court a motion to terminate the Decree and served a copy of that motion upon the United States, so long as either (1) Tamarack's motion to terminate the Decree is accompanied by a true and correct copy of the United States' notice that it does not object to the termination or (2) Tamarack prevails in any motion it files to terminate the decree.
- d. Any dispute involving Tamarack's right to terminate the Decree shall not be

subject to the dispute resolution process of Section VII.

V. EFFECT OF DECREE

34. Covenants Not to Sue by United States. This Consent Decree resolves the civil claims of the United States against Tamarack for the violations alleged in the Complaint filed in this action through the date of lodging of the Consent Decree.

35. No Effect on Third Parties. This Consent Decree does not limit or affect the rights of Tamarack or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Tamarack, except as otherwise provided by law.

36. United States' Reservations of Rights. The United States reserves all legal and equitable remedies available to enforce this Consent Decree, except as expressly stated in paragraph 34. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or its implementing regulations, or under other federal or State laws, regulations, or permit conditions, except as expressly specified in Paragraph 34.

37. Effect of Decree. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

38. Not a Permit Modification. This Decree is neither a permit nor a modification of existing permits under any federal, state, or local law, and in no way relieves Tamarack of its responsibilities to comply with all applicable federal, state, and local laws and regulations.

VI. STIPULATED PENALTIES

39. Stipulated Penalty Amounts. If EPA determines that Tamarack has failed to

comply fully and timely with the requirements of this Decree, Tamarack shall pay stipulated penalties in the following amounts:

- a. for failure to follow the requirements set forth in Paragraphs 2 - 5 (winter construction requirements) - \$1,500.00 per day for days 1 - 10; \$2,500.00 per day for days 11 - 20; and, \$3,500.00 per day for days 21 and continuing;
- b. for failure to timely submit a report per Paragraph 11 (known CGP and Decree violations) - \$750.00 per day; and,
- c. for failure to timely submit a complete Annual Report per Paragraph 12 - \$750.00 per day.

40. Payment of Stipulated Penalties.

- a. All penalties owed to the United States under this Section shall be due and payable within 30 days of Tamarack's receipt from the United States of a demand for payment of the penalties, unless Tamarack invokes the procedures under Section VII (Dispute Resolution). Tamarack shall forward the amount due by Electronic Funds Transfer ("EFT") to the United States Department of Justice lockbox bank referencing DOJ case number DOJ # 90-5-1-1-08976. and the United States Attorney General's Office file number in accordance with instructions in Paragraph 15 provided by the United States upon entry of this Decree. Any EFTs received at the United States Department of Justice lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next Business Day. After payment, Tamarack shall mail a cover letter specifying the amount and date of payment, civil docket number and reason for payment, to the United States in accordance with Paragraph 27 (Notification).
- b. Tamarack may request, in writing, that the United States waive stipulated

penalties which have accrued pursuant to Paragraph 39. The United States may, in its sole discretion, waive such claims.

41. Accrual of Stipulated Penalties. Stipulated penalties shall begin to accrue on the day after performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree. Stipulated penalties shall accrue regardless of whether the United States has notified Tamarack of a violation.

42. No Effect on Obligation to Comply. The payment of penalties shall not alter in any way Tamarack's obligation to comply with the requirements of this Decree.

43. Effect of Dispute Resolution. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, Tamarack shall pay accrued penalties determined to be owing to the United States within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Tamarack shall pay all accrued penalties determined by the Court to be owed within 30 days of receipt of the Court's decision or order, except as provided in subparagraph (c) of this Paragraph;

c. If the Court's decision is appealed by any party, Tamarack shall pay all accrued penalties determined by the District Court to be owing into an interest-bearing escrow account within 30 days of receipt of the Court's decision or order. Penalties shall be paid into this account

as they continue to accrue, at least every 30 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States or to Tamarack to the extent that they prevail.

44. Interest on Late Payment. If Tamarack fails to pay stipulated penalties when due, Tamarack shall pay interest accrued at the rate established by the Secretary of the Treasury under 31 U.S.C. § 3717 beginning upon the day the stipulated penalties were due.

45. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Decree. The United States expressly reserves the right to seek any other relief it deems appropriate, including but not limited to, action for statutory penalties, contempt, or injunctive relief against Tamarack. However, the amount of any statutory penalty assessed for a violation of this Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Decree for the same violation.

VII. DISPUTE RESOLUTION

46. Exclusive Remedy. Unless otherwise expressly provided for in this Decree, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Tamarack that have not been disputed in accordance with this Section.

47. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen on the day Tamarack hand delivers the United States a written Notice of Dispute or on the day following delivery by overnight courier, or three days following delivery by U.S. Mail. Such

Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, Tamarack invokes formal dispute resolution procedures set forth in Paragraph 48 (Formal Dispute Resolution).

48. Formal Dispute Resolution.

a. Within 45 days after the conclusion of the informal negotiation period, Tamarack may invoke formal dispute resolution procedures by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting Tamarack's position and any supporting documentation relied upon by Tamarack.

b. The United States shall serve its Statement of Position within 45 days of receipt of Tamarack's Statement of Position. The United States' Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting that position and all supporting document relied upon by the United States. The United States' Statement of Position shall be binding on Tamarack unless Tamarack files a motion for judicial review of the dispute in accordance with Paragraph 49 (Petitions to the Court).

49. Petitions to the Court. In the event that the parties cannot resolve a dispute by negotiations as set forth above, the following procedures shall control:

a. Tamarack may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion

shall be filed within 45 days of receipt of the United States' Statement of Position set forth in Paragraph 48(b) (Formal Dispute Resolution). The motion shall contain a written statement of Tamarack's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Decree.

b. The United States shall respond to Tamarack's motion within 45 days of receipt of the motion, unless the parties stipulate otherwise.

c. Tamarack may file a reply memorandum within 30 days of receipt of the United States' response.

d. In any dispute under this Paragraph, Tamarack shall bear the burden of demonstrating that its position complies with this Decree and the Clean Water Act and that Tamarack is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and shall be upheld unless arbitrary and capricious or otherwise not in accordance with law. For purposes of this Decree, the administrative record shall comprise the Statements of Position exchanged by the Parties pursuant to Paragraph 48 (Formal Dispute Resolution), including any documents attached to or incorporated by reference in those Statements. Tamarack reserves the right to argue that its position is based on a reasonable interpretation of a statute, regulation, or permit, or a reasonable interpretation of this Decree and that the United States' litigation position is not entitled to any deference.

50. Effect on Other Obligations. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of

Tamarack under this Decree not directly in dispute, unless the United States agrees in writing or the Court orders otherwise.

51. Computation of Time. The computation of any period of time set forth in this Section VII shall be governed by Rule 6 of the Federal Rules of Civil Procedure.

VIII. FORCE MAJEURE

52. Definition of Force Majeure. A “force majeure event” is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Decree despite Defendant’s best efforts to fulfill the obligation. “Best efforts” includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Decree. Failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Decree, or failure of Tamarack to approve contracts shall not, in any event, be considered Force Majeure events.

53. Required Notification for Force Majeure. Tamarack shall notify the United States orally and by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Tamarack first knew of, or in the exercise of reasonable diligence under the circumstances should have known of, any event which might constitute a Force Majeure event. Tamarack shall make the oral notification required by this Paragraph by calling Robert Grandinetti at (509) 376-3748 and sending him a message by electronic mail at Grandinetti.Robert@epa.gov. If Mr. Grandinetti is not available by telephone, Tamarack may

satisfy the telephone notice requirement by leaving a message for Mr. Grandinetti stating that Tamarack had called to notify him pursuant to this Paragraph. The United States may designate an alternative representative to receive oral notification at its discretion by sending Tamarack a written designation in accordance with Paragraph 27 (Notification). The written notice Tamarack submits pursuant to this Paragraph shall indicate whether Tamarack claims that the delay should be excused due to a Force Majeure event. The notice shall describe in detail the basis for Tamarack's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Tamarack shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify the United States shall render this Section VIII (Force Majeure) void and of no effect as to the event in question, and shall be a waiver of Tamarack right to obtain an extension of time for its obligations based on such event.

54. Procedures for Extension. If the United States finds that a delay in performance is, or was, caused by a Force Majeure event, the United States shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such a period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section VII (Dispute Resolution) shall apply, and Tamarack shall have the burden of proving that the delay is, or was, caused by a Force Majeure event and that the amount of additional time requested is necessary to compensate for that event.

55. Effect on Other Obligations. Compliance with a requirement of this Decree shall

not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date.

Tamarack shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

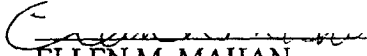
SO ORDERED THIS _____ DAY OF _____, 2007

HON.
UNITED STATES DISTRICT JUDGE


WE HEREBY CONSENT to the entry of the Decree in United States v. Tamarack Resort LLC subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE UNITED STATES OF AMERICA:


Date: _____


ELLEN M. MAHAN
Deputy Section Chief
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Date: 1/7/08


DAVID L. DAIN
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-3644

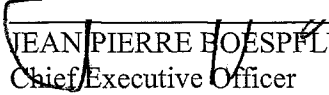
Date: 1/22/08


DEBORAH A. FERGUSON
Assistant U.S. Attorney
District of Idaho
P.O. Box 32
Boise, ID 83707
(208) 334-1211

Date: 1-11-08

WALKER B. SMITH
Director, Office of Civil Enforcement
U.S. EPA
Ariel Rios Building South
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

WE HEREBY CONSENT to the entry of the Decree in United States v. Tamarack Resort LLC subject to the public notice requirements of 28 C.F.R. §50.7.
FOR TAMARACK RESORT LLC:

Date: 12-20-2007 
JEAN PIERRE BOESPLUG
Chief Executive Officer
Tamarack Resort LLC

